



NAMAKWA DISTRICT MUNICIPALTY

DRAFT AIR POLLUTION CONTROL BY- LAW

Air Quality Management

March 2023

Preamble

WHEREAS everyone has the constitutional right to an environment that is not harmful to their health or well-being;

WHEREAS everyone has the constitutional right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that–

- a) Prevent pollution and ecological degradation;
- b) Promote conservation; and
- c) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

WHEREAS Part B of Schedule 4 of the Constitution lists air pollution as a local government matter to the extent set out in section 155(6)(a) and (7);

WHEREAS section 156(1)(a) of the Constitution provides that a municipality has the right to administer local government matters listed in Part B of Schedule 4 and Part B of Schedule 5;

WHEREAS section 156(2) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer;

WHEREAS section 156(5) of the Constitution provides that a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS the Municipality of NAMAKWA seeks to ensure management of air quality and the control of air pollution within the area of jurisdiction of the NAMAKWA DISTRICT MUNICIPALITY and to ensure that air pollution is avoided or, where it cannot be altogether avoided, is minimized and remedied.

AND NOW THEREFORE, BE IT ENACTED by the Council of the NAMAKWA DISTRICT MUNICIPALITY, as follows:-

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Under the powers conferred by section 156(2) of the Constitution of the Republic of South Africa Act, 1996 (Act No.108 of 1996), the Namakwa District Municipality adopts the following air pollution control by-law:

CHAPTER 1

INTERPRETATION AND FUNDAMENTAL PRINCIPLES

1. Interpretation

1. In this by-law unless the context indicates a contrary intention, an expression which denotes:
 - (i) Any gender includes the other gender;
 - (ii) A natural person includes a juristic person and vice versa;
 - (iii) The singular includes the plural and vice versa.
2. In this by-law the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings, unless such meanings are inconsistent with the context in which they occur.

2. Definitions

“Authorized person” means any employee authorized by the municipality to implement any of the provision of this by-law and in possession of an appointment card issued by the municipality attesting thereto, including any member of the municipal police service or any peace officer;

‘Authorized official’ means -

- (a) An environmental management inspector appointed in terms of the National Environmental Management Act; and
- (b) All peace officers as defined in the Criminal Procedure Act.

“Air quality management plan” means a plan referred to in section 15 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);

“Air pollution” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“All Terrain Vehicles” means any self-propelled conveyance designed for off road use including but not limited to quad bikes, motor cycles and motor buggies;

“AQA”: National Environmental Management: Air Quality Act no. 39 of 2004,

“Compressed ignition powered vehicle” means a vehicle powered by an internal combustion, compression ignition, diesel or similar fuel engine;

“Constitution” means the Constitution of the Republic of South Africa, 1996

“Construction activity” means any commercial or residential construction, highway construction, including land clearing, maintenance, soil or rock excavation or removal, soil or rock hauling, soil or rock crushing, explosive blasting demolition or dismantling of buildings implosion the handling of building materials or mechanized trenching; or other activity reasonably related thereto or which may reasonably be said to be associated with a construction or demolition activity.

“Control measure” means - means a technique, practice or procedure used to prevent or minimize the generation, emission, suspension or airborne transport of fugitive dust, pesticide or sandblasting activities;

“Continuing offence” means an offence where the act or omission giving rise to the issuing of a notice has not been repaired, removed or rectified by the expiry of a notice issued in terms of this By-law;

“Council” means a member of the municipal council, individually or collectively as the Council of the Namakwa District Municipality;

“Dark smoke” means smoke which has a density of 60 Hartridge smoke units or more, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a density 66 Hartridge smoke units or more; or smoke which has a light absorption co-efficient of more than 2.125 m⁻¹, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a light absorption co-efficient of more than 2.51 m⁻¹;

“Free acceleration test” means the method described in subsection 18.3 employed to determine whether vehicles are being driven or otherwise used in contravention of subsection 18.1;

“MEC” means the member of the Executive Council of a province who is responsible for air quality management in the province;

“Municipality” means a municipality established in terms of the Local Government: Municipal Systems Act, 1998 (Act No. 117 of 1998);
Means the Namakwa District Municipality;

“Minister” means the Minister of Environmental Affairs and Tourism;

“National Framework” means the National Framework for Air Quality Management in the Republic of South Africa, as published in terms of section 7(1) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
As defined in the National Environmental management: Air Quality Act, 2004

“NEMA” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“Nuisance” means an unreasonable interference or likely interference caused by air pollution with:

- (a) the health or well-being of any person or living organism; or
- (b) the use and/or enjoyment by an owner or occupier of his or her property and/or environment;

“Pave” means to apply and maintain concrete or any other similar material to a road surface;

“Pest” means an injurious, noxious or troublesome living organism;

“Pesticide” means a micro-organism or material that is used or intended to be used to prevent, destroy, repel or mitigate a pest and includes herbicides, insecticides, fungicides, avicides and rodenticides;

Pollution” means any change in the environment caused by -

- (i) Substances;
- (ii) Radioactive or other waves; or
- (iii) Noise, odours, dust or heat,

Emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or wellbeing or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“Public road” means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes -

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare

“Open burning” means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, excluding the burning of sugar cane;

“Organ of state” has the meaning assigned to it in section 239 of the Constitution;

“Owner and/or operator” means any person who owns, leases, operates, controls or supervises a fugitive dust source;

“Repair notice” means a notice as referred to in subsection 15(4), regarding the re-testing of vehicle;

“Rubber product” means anything composed of rubber including anything containing or coated with rubber;

“Smoke” means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes soot, grit and gritty particulates emitted in smoke;

“Unpaved road” means a public or a private unpaved road and includes an unpaved alley, an unpaved road easement or shoulder and any unpaved access roads for utilities;

“Unpaved parking lot” means an area which is not paved and used for parking, maneuvering, or storing of motor vehicles;

“Use” in relation to all-terrain vehicles includes driving, operating or being conveyed by, that vehicle;

“Vacant lots” means any vacant portions of land in the municipality

“Vehicle” means a device designed or adapted mainly to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves solely on rails

3. Purpose and Objectives

In terms of section 46 of the NEMA, the Minister may make model environmental management by-laws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality, which may be adopted by a municipality as municipal by-laws. The generic air pollution control by-law has been drafted in accordance with this enabling provision of the NEMA, and is hereby published as a schedule in terms of the NEMA.

In terms of section 156(2) of the Constitution 1996, a municipality may make and administer by-laws for the effective administration of matters that it has the right to administer. Air pollution is listed as a matter in which local government has authority and national or provincial government may not compromise or impede a municipality's right to exercise its powers or perform its functions. Within this context, municipalities may develop by-laws that deal with air pollution. As with the national and provincial departments, municipalities have numerous responsibilities in which they ought to establish municipal standards for emissions from point, non-pointed and mobile sources.

- 1) The objectives of this by-law are to –
 - (a) give effect to the rights contained in section 24 of the Constitution by regulating air pollution within the area of the municipality's jurisdiction;
 - (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the Council can manage and regulate all activities that have the potential to adversely impact the environment and public health; and
 - (c) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimized.

- (2) under these By-laws, must exceeds that power and perform that function. Any person on whom a power is conferred or a function or duty is imposed or duty in order to give effect to the objectives specified in subsection (1)

4. Application

- (1) This by-law is applicable –
 - (a) within the area of jurisdiction of the municipality; and
 - (b) in addition to any applicable national or provincial legislation.

- (2) The overarching principles set out in section 6 below, must be considered and applied by any person:
 - (a) exercising a power or function or performing a duty under this by-law; and
 - (b) exercising a public power or function or performing a public duty in the municipal area which is likely to have a significant effect on public health and the environment within that area.

- (3) In the event of a conflict between these By-laws and any other by-laws of the Council, these By-laws shall prevail to the extent of the inconsistency.

- (4) In the event that the by-law is in conflict with any of the provisions of the NEMA or AQA, the provisions of the latter will prevail.

- (5) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the municipality, regulates air pollution, the provisions of this by-law shall prevail to the extent of the inconsistency.

5. Overarching Principles

- (1) Any person who is wholly or partially responsible for causing significant air pollution or creating such risks of significant air pollution must take all reasonable measures:
 - (a) to prevent any potential significant air pollution from occurring; and
 - (b) where it cannot be prevented, to mitigate, as far as reasonably possible, any significant air pollution that may occur.

- (2) If the Council or air quality officer is of the opinion that a person has failed to comply with any of the provisions set out in subsection (1) he or she must, subject to the provisions of subsection (3), prior to taking any steps to criminally charge that person, by notice in writing delivered to him or her and require that person remedies such contravention or non-compliance

by taking reasonable steps in the notice within a time best specified .in writing who fails to take the measures required under subsection (1) –

- (a) to investigate, evaluate and assess the impact of specific activities and report thereon;
- (b) to commence taking specific reasonable measures before a given date;
- (c) to diligently continue with those measures; and
- (d) to complete them before a specified reasonable date.

(4) Prior to making such a decision as contemplated in subsection (2), the Council or air quality officer must give the affected person adequate opportunity to make representation as to why a directive should not be issued.

(5) The Council must give due consideration to all representations submitted before taking a decision as contemplated in subsection (2).

(4) Should a person fail to comply, or inadequately comply, with a directive under subsection (2), the Council may take reasonable measures to remedy the situation.

(5) Provided such person failed to take the measures required of him under subsection (2), the Council may recover all reasonable costs incurred as a result of it acting under subsection (4) from any or all of the following persons –

(a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;

(b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;

(c) the person in control of the land or any person who has or had a right to use the land at the time when –

(i) the activity or the process in question is or was performed or undertaken; or

(ii) the situation came about; or

(d) any person who negligently failed to prevent –

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about.

(6) If more than one person is liable under subsection (4), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (2).

(7) In dealing with air pollution matters, the Council must –

(a) adopt a cautious and risk adverse approach; and

(b) take into account the interests of future generations.

(c) or any other reasonable measure

CHAPTER 2

APPOINTMENT OF AIR QUALITY OFFICERS

6. Designation of an Air Quality Officer

(1) The Council must, subject to the laws governing the public service, designate an official within its administration to be the air quality officer.

(2) Subject to subsection 8(1), the air quality officer may also be designated as an environmental management inspector, as contemplated in section 31C of the NEMA. The Council must, in consultation with the Executive Director, designate or appoint an employee of the Municipality as the Air Quality Officer to be responsible for coordinating matters pertaining to air quality management and granting or rejecting Atmospheric Emission Licenses or Provisional Atmospheric Emission Licenses in terms of the Air Quality Act within the Municipality's jurisdiction.

(3) The air quality officer shall, under the directions of the Council, exercise the duties and powers assigned to him under this by-law.

7. Designation as Environmental Management Inspectors

- (1) The MEC may, subject to the laws governing the public service, designate so many persons, as he may consider necessary, within the administration of the municipality as environmental management inspectors.
- (2) Before the designation as environmental management inspectors, such persons must complete the training as prescribed by the Minister in terms of the NEMA Regulations relating to qualification criteria, training and identification of, and forms to be used by environmental management inspectors, published under Government Notice R480, in *Government Gazette* 40879 of 31 May 2017, as amended.
- (3) The designation of environmental management inspectors must be in accordance with sections 31C to 31F of the NEMA, as amended.
- (4) A designated an environmental management inspector shall have all the functions and powers as set out in sections 31G to 31L of the NEMA, as amended.

8. Duties and Functions of the Air Quality Officer

- (1) The air quality officer must co-ordinate the develop of the municipality's Air Quality Management Plan for inclusion as a chapter in its Integrated Development Plan, in accordance with Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
- (2) The air quality officer must prepare the Municipal Air Quality Officer's Annual Report. The report must, amongst others, include the municipality's progress towards the implementation of its Air Quality Management Plan.
- (3) The air quality officer must submit the Municipality's report to the Provincial Air Quality Officer as contemplated in paragraph 5.2.3.4 of the National Framework for Air Quality Management in the Republic of South Africa.
- (4) The air quality officer may require a person to appoint an Emission Control Officer, as contemplated in section 48 of the AQA, as amended.

CHAPTER 3

LOCAL EMISSIONS STANDARDS, NORMS AND STANDARDS AND CONTROLLED APPLIANCES AND ACTIVITIES

Part 1: Local Emission Standards

9. Legal Mandate

- (1) The Council may, by notice in the *Provincial Gazette*:
 - (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the municipality or which the municipality reasonably believes present such a threat; and
 - (b) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point, non-point or mobile sources in the municipality.
- (2) If national or provincial standards have been established in terms of section 9 or 10 for any particular substance or mixture of substances, a municipality may not alter any such national or provincial standards except by establishing stricter standards for the municipality or any part of the municipality.

Part 2: Norms and Standards

10. Substances Identification Process

- (1) The municipality must apply the following criteria when identifying and prioritizing the substances in ambient air that present a threat to public health, well-being or the environment -
 - (a) the possibility, severity and frequency of effects, with regard to human health and the environment as a whole, with irreversible effects being of special concern;
 - (b) ubiquitous and high concentrations of the substance in the atmosphere;
 - (c) potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce any other uncertainties;
 - (d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
 - (e) the impact of the substance taking the following factors into consideration:
 - (i) size of the exposed population, living resources or ecosystems;
 - (ii) the existence of particularly sensitive receptors in the zone concerned;
 - (f) Substances that are regulated by international conventions.

2. The Council shall take the following factors, as identified in paragraph 5.4.3.1 of the National Framework, into consideration in setting local emission standards:
 - (a) Health, safety and environmental protection objectives;
 - (b) Analytical methodology;
 - (c) Technical feasibility;
 - (d) Monitoring capability; and
 - (e) Socio-economic consequences.
3. The municipality, using the criteria set out in subsection (1) above, must compile a list of substances.
4. The list of substances must form part of the formal request, by the Municipality, to the Standards South Africa, a division of the South African Bureau of Standards, to develop local emissions standards for the identified substances.

11. Publication of Local Emission Standards

For the purposes of the publication of the emission standards, the municipality must follow the public participation process as set out in section 13 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), the publication must circulate the listed activity authorised by the licence is, or will be, carried out, it must also:

- (a) describe the nature and purpose of the request;
- (b) and give particulars of the listed activity, including the place where it is or will be carried out;
- (c) stating a reasonable period within which written representations on or objections to the request may be submitted, and the address or place where representations or objections must be submitted.

12. Local emissions standards setting process

- (1) When developing the – local emission standards, the following standards setting process is applicable:
 - (a) identification of critical factors for public health impacts;
 - (b) identification of sensitive sub-populations;
 - (c) reviewing available databases for public health status;
 - (d) reviewing available databases for ambient air quality information; and

- (e) reviewing and assessing international guidelines and standards.

Part 3: Controlled Appliances and Activities

13. Emissions from Compressed Ignition Powered Vehicles

(1) Offences

- (a) No person may, in a public or private road, drive; use or cause a compression ignition powered vehicle that emits dark smoke.
- (b) If dark smoke is emitted in contravention of subsection 1(a) above the owner and the driver of the vehicle shall each be guilty of an offence.
- (c) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

(2) Stopping of Vehicles for Inspection and Testing

- (a) In order to enable an authorised person to enforce the provisions of this Part, the driver of a vehicle must comply with any reasonable direction given by an authorised person:
 - (i) to stop the vehicle; and
 - (ii) to facilitate the inspection or testing of the vehicle.
- (b) failure to comply with a direction given under subsection 13.2(a) is an offence.
- (c) When a vehicle has stopped in compliance with a direction given under subsection 13.2(a), the authorised person may:
 - (i) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:
 - (aa) at or as near as practicable to the place where the direction to stop the vehicle is given; and
 - (bb) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or
 - (ii) conduct a visual inspection of the vehicle and, if the authorised person reasonably believes that an offence has been committed under subsection 13.1(b), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with subsection 13.3.

12 (3) The authorised person must, prior to any testing being undertaken in terms of Testing procedure indicated in this by- law inform the driver of the vehicle that:

- (a) the vehicle has been stopped to test it in terms of this by-law for the emission of dark smoke;
- (b) the vehicle is being detained for the purpose of such testing;
- (c) if the results of such testing indicate that dark smoke is emitted from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this by-law.

3. *Testing procedure*

(a) An authorised person must use the free acceleration method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of subsection 13.1(a).

- (b) The following procedure must be adhered to in order to conduct a free acceleration test:
 - (i) when instructed to do so by the authorised person, the driver of the vehicle must start the vehicle, place it in neutral gear and engage the clutch;
 - (ii) while the vehicle is idling, the authorised person must conduct a visual inspection of the emission system of the vehicle;
 - (iii) when instructed to do so by the authorised person, the driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle, provided that the authorised person may do so himself or herself if the driver fails or refuses to comply with the authorised person's reasonable instructions;
 - (iv) while the throttle accelerator pedal is depressed, the authorised person must measure the smoke emitted from the vehicle's emission system in order to determine whether or not it is dark smoke;
 - (v) the driver of the vehicle may only release the throttle pedal of the vehicle when the engine reaches cut-off speed, or when directed to do so by the authorised person.

(c) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle:

- (i) is not emitting dark smoke, then the authorised person must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of subsection 13.1(a); or
- (ii) is emitting dark smoke, the authorised person must issue the driver of the vehicle with a repair notice in accordance with subsection 13.4.

4. Repair notice

(a) A repair notice must direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period.

(b) The repair notice must contain inter alia the following information:

- (i) the make, model and registration number of the vehicle;
- (ii) the name, address and identity number of the driver of the vehicle; and
- (iii) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.

(c) A person commits an offence under this section if that person fails:

- (i) to comply with the repair notice referred to in subsection 15.4(a);
- (ii) to take the vehicle for re-testing as referred to in subsection 15.4(a).

(d) It shall not be a defence in proceedings under subsection 15.4(c) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

14. Dust Emissions

(a) Any person who causes dust emissions shall take all reasonable precautions to prevent excessive emissions into the atmosphere that may be harmful to public health and well-being.

(b) Any person conducting certain activities identified in this section, which customarily produce excessive emissions of dust, shall be required to adopt control measures as prescribed by the authorised person prior to the commencement of activities, to abate and prevent excessive emissions.

14.1 Construction activities

(a) A person who engages in or carries out any construction activity or operation on any land or premises is guilty of an offence, unless that person complied with other applicable legislation and has notified in writing the owners and occupiers of all adjacent properties of:

- i) all known details of the proposed construction activity or operation;
- (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed construction activity or operation with the Council within seven days of being notified; and
- (iii) the prescribed fee has been paid to the Council.

(b) The provisions of this section are not applicable to:

- (i) landscaping activities by a person at his place of residence; and/or
- (ii) emergency maintenance activities on publicly maintained roads, road shoulders and rights of way.

14.2 Unpaved roads

(a) Owners and/or operators of unpaved roads must implement reasonable control measures to prevent excessive emissions of dust into the atmosphere that may be harmful to public health and well-being.

(b) Owners and/or operators must implement one or more of the following control measures:

- (i) pave;
 - (ii) the use of dust palliatives or dust suppressants;
 - (iii) uniformly apply and maintain surface gravel; and/or
 - (iv) any alternative control measure approved in writing by the air quality officer.
- (c) Any person subject to the requirements of this section shall compile and retain records of any control measures implemented including:
- (i) the type of control measure;
 - (ii) the extent of coverage; and/or
 - (iii) the date applied.
- (d) Copies of the records required in subsection 13.2(c) above shall be retained for a period of at least two years.
- (e) The provisions of this section are not applicable to:
- (i) unpaved roads having vehicular traffic of less than 150 vehicles per day;
 - (ii) non-commercial and non-institutional private driveways;
 - (iii) horse trails, hiking paths, bicycle paths or other similar paths; and/or
 - (iv) any other path that has been designated as an exclusive use area for purposes other than travel by motor vehicle.

14.3 Vacant lots

- (a) Owners and/or operators of vacant lots of which have 1 square kilometre or more of disturbed surface area and remain unoccupied, unused, vacant or undeveloped for a period of more than ninety days must implement reasonable control measures to prevent excessive emissions into the atmosphere that may be harmful to health and well-being.
- (b) Owners and/or operators must implement one of the following control measures:
 - (i) erect physical barriers and signs to prohibit access to the disturbed areas by motor vehicles;

- (ii) the use of ground covers;
- (iii) the use of dust palliatives or dust suppressants;
- (iv) re-vegetation which is similar to adjacent undisturbed native conditions, and/or
- (v) any alternative control measure approved in writing by the air quality officer.

14.4 Unpaved parking areas

- (a) Owners and/or operators of unpaved parking lots on which more than 100 vehicles are parked for more than 150 days per year must implement reasonable control measures to prevent excessive emissions into the atmosphere that may be harmful to public health and well-being.
- (b) Owners and/or operators must implement one of the following control measures:
 - (i) pave;
 - (ii) apply dust palliatives or dust suppressants;
 - (iii) uniformly apply and maintain surface gravel, and/or
 - (iv) any alternative control measure approved in writing by the air quality officer.

15. Vehicles

- (a) Any person who uses an all vehicles, shall take all reasonable precautions to prevent creating a public nuisance and materially interfere with the ordinary comfort and convenience of other people.
- (b) No person may use an all vehicle unless such use:
 - i) is a permissible use in terms of the NEMA Regulations on the control of vehicles in the coastal zone, published under Government Notice 1399, Government Gazette No. 22960 of 21 December 2001, as amended;
 - (ii) is authorised for use on a public road;
 - (iii) is on private land by the owner or with permission of the owner or lawful occupier of that land;
 - (iv) takes place within a designated recreational all terrainall-terrain vehicle use area; or
 - (v) takes place in an emergency situation in order to safeguard human life or health, property or the environment.

16. Emissions Caused by Open Burning

(1) A person who carries out or permits open burning of any material on any land or premises is guilty of an offence, unless:

(a) the prior written authorisation of the Council has been obtained, which authorisation may be granted by the Council with conditions, and

(b) that person has notified in writing the owners and occupiers of all adjacent properties of:

(i) all known details of the proposed open burning; and

(ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the Council within seven days of being notified; and

(iii) the prescribed fee has been paid to the Council.

(c) the land on which that person intends to open burn the material is State land, a farm or small-holding, or land within a proclaimed township that is not utilised for residential purposes.

(2) The Council may not authorise open burning:

(a) unless it is satisfied that the requirements set out in subsection (1) have been adequately addressed or fulfilled; and

(b) where a warning under section 10(1)(b) of the National Veld and Forest Act, 1998 (Act No. 101 of 1998) has been published for the region. Council must ensure warnings are given at the earliest possible opportunity in all the main languages used in that region-

(i) on three television channels and three radio stations broadcasting to that region; and

(ii) in two newspapers circulating in that region; and

(c) ensure that recordings are kept of the broadcasts and copies are kept of the 10 newspaper notices.

3) The provisions of this section shall not apply to:

- (a) recreational outdoor braai /barbeque activities on private premises;
- (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
- (c) any other defined area or defined activity to which the Council has declared this section not to apply.

17. Emissions Caused by Burning of Industrial Waste Domestic waste and Garden Waste in Waste Bins or Skips on any land or premises

A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste, is committing an offence unless the industrial, domestic or garden waste is legally disposed of in terms of section 26 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

18. Emissions Caused by Tyre Burning and Burning of Rubber Products and Cables in Open Spaces

- (1) No person may carry out or permit the burning of any tyres, or rubber products, cables or any other products on any land or premises for the purposes of recovering the scrap metal or fibre reinforcements, or of disposing of tyres or of the rubber products or cables as waste.
- (2) Any person who contravenes subsection (1) is guilty of an offence.

19. Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of pesticides, except as permitted by section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) Any person who contravenes subsection (1) of this by-law is guilty of an offence, as set out in section 18(1)(c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (3) A person who carries out or permits the spraying of pesticides, within the municipal jurisdiction, must also comply with the following controlled measures:

(a) The prior written authorisation of the Council has been obtained, which authorisation may be granted by the Council with conditions, including

- (i) the area of land on which the pesticide may be applied; and
- (ii) the period of time in which the pesticide may be applied.

(b) that person must notify in writing the owners and occupiers of all adjacent properties within 150 metres of the treatment area of:

- (i) the details of the proposed treatment area;
- (ii) the reason for the pesticide use;
- (iii) the active ingredient;
- (iv) the date and approximate time of the pesticide use;
- (v) in the event of inclement weather conditions, an alternative date or dates on which the pesticide use may occur;
- (vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
- (vii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Council within seven days of being notified; and
- (viii) the prescribed fee has been paid to the Council.

(4) Any person who contravenes subsection (3) is guilty of an offence.

(5) A person may apply to the Council for an exemption if the spraying of the pesticide is for:

- (i) the management of pests that transmit human diseases or adversely impact agriculture or forestry;
- (ii) the management of pests that threaten the integrity of sensitive ecosystems; or
- (iii) the need for the use of the pesticide is urgent.

- (6) The provisions of this section are not applicable to:
- (a) residential areas of farms;
 - (b) buildings or inside buildings; or
 - (c) any other defined area or defined activity to which the Council has declared this section not to apply.

20. Emissions That Cause A Nuisance

20.1 Prohibition

Any occupier or owner of premises from which a nuisance emanates, or where a nuisance exists, is guilty of an offence.

20.2 Abatement notice

(1) An authorised person may serve an abatement notice on any person whom the authorised person reasonably believes is likely to commit or has committed an offence under section 19.1 above, calling upon that person:

- (a) to abate the nuisance within a period specified in the notice;
- (b) to take all necessary steps to prevent a recurrence of the nuisance; or
- (c) to comply with any other conditions contained in the notice.

(2) For the purposes of subsection (1) above, an authorised person may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the abatement notice is to be served.

(3) An abatement notice under subsection (1) above may be served:

- (a) upon the owner of any person, by:

- (i) delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;
- (ii) transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
- (iii) delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;

(b) upon the occupier of the premises, by:

- (i) delivering it to the occupier;
- (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

(4) Any person who fails to comply with an abatement notice served on that person in terms of subsection (1) above is guilty of an offence.

(5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (4) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

20.3 Steps to abate nuisance

- (1) At any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

CHAPTER 4

LICENSING OF LISTED ACTIVITIES

21. Establishment of Air Quality Management Licensing System

The Council hereby establishes an air quality licensing management system as contemplated in Chapter 5 of the AQA. District municipalities are charged with implementing the atmospheric emission licensing system referred to in section 22 of AQA, and must for this purpose perform the functions of licensing authority as set out in this Chapter and other provisions of this Act, subject to subsections (2), (3) and (4) of AQA .

22. Purpose of the Air Quality Management Licensing System

- (1) The purpose of the air quality management licensing system is to –
 - (a) identify and register all sources of air pollution in the municipal area;
 - (b) regulate and ensure compliance with the licence conditions;
 - (c) gather information for the purposes of compiling the municipality’s air quality plan, as contemplated in section 15 of the AQA; Each municipality must include in its integrated development plan contemplated
 - (d) undertake strategic planning; and
 - (e) provide information to any person in order to–
 - (i) facilitate monitoring of the performance of the municipality, and if applicable, licensee;
 - (ii) stimulate research by acknowledged institutions; and
 - (iii) assist the municipality to achieve the main objectives of this by-law.

23. Application for Atmospheric Emission Licenses

- (1) No person shall undertake a listed activity, as published in terms of section 21 of the AQA, without an atmospheric emission license.
- (2) An application for an atmospheric emission license must be:
 - (a) made in writing on the prescribed form published in terms section 53 of the AQA; Section 53 are regulations by the Minister

- (b) accompanied by documents or information as may be required by the municipality, and
- (c) on payment of the prescribed application fee.

(2) The municipality must on receipt of an application for an atmospheric emission license:

- (a) acknowledge receipt, within fourteen days, of the application form,
- (b) acknowledge receipt, within fourteen days, of the payment of the prescribed fee,
- (c) check whether the application is properly completed and contains the information required in the applicable form, and
- (d) is accompanied by the required information or documents required in terms of this by-law.

(3) Before considering an application made in terms of subsection (2), the municipality may require the applicant to furnish additional information and/or specialist study.

(4) Any person who undertakes a listed activity without an atmospheric emission license is guilty of an offence and is subject to the penalties as set out in section 52 52 of the AQA.

24. Factors to be taken into Account

(1) The municipality must, in addition to the factors set out in section 39 of the AQA, consider each application having regard to the following factors:

- (a) compliance with the AQA and this by-law, where relevant; and
- (b) the environmental, health and safety record of the applicant.

25. Decisions

(1) After considering the application in terms of section 22 of the by-law, the municipality must, within sixty six days, either -

- (a) approve the application by issuing an atmospheric emission license, subject to such conditions as the municipality may impose; or

- (b) reject the application.

(2) If the municipality fails to grant or rejects an atmospheric emission license within ninety days after considering the application in terms of section 22 of the by-law, it must inform the applicant in writing that the period for consideration is extended and must inform the applicant of the date by which a decision will be made to grant or reject the application.

After a licensing authority has reached a decision in respect of a license application, it must within 30 days-

- (a) notify the applicant of the decision, and give written reasons if the application was unsuccessful;

- (b) in a manner determined by the licensing authority, notify any persons who have objected to the application; and

- (c) at the request of any person contemplated in paragraph (b) , give written reasons for its decision or make public its reasons.

26. Terms and Conditions of the Atmospheric Emission Licenses

(1) When issuing an atmospheric emission license, the municipality may, impose reasonable conditions, as it may deem necessary.

(2) Atmospheric emission license issued under this section must –

- (a) comply with section 43 of the AQA;

- (b) contain a requirement that the license holder must comply with, and ensure compliance by his employees, agents and sub-contractors, with this by-law and other applicable national and/or provincial legislation; and

- (c) require the license holder to submit emission reports as required in terms of the section 21 notice under the AQA.

27. Variation of Atmospheric Emission Licenses

No building, plant or works used by a license holder shall be materially extended, altered or added to and no changes in process, procedures or significant production increases that will significantly alter impacts may be undertaken without the prior approval of the municipality (section 46 of AQA).

28. Cancellation of Atmospheric Emission Licenses

The person must on cessation of operations notify the municipality of the decommissioning of the plant.

CHAPTER 5

OFFENCES AND PENALTIES

29. Offences and Penalties

(1) Any person who contravenes section 4(9), 8{2}, 10(5), 11(1), 13{5}, 17(3), 18(7){d}, 18{11},18(15) or 19(2) shall be liable on conviction to imprisonment for a period not exceeding 6 months or to a fine or to both a fine and such imprisonment.

(2) Any person who contravenes section 6{2}, 8{5}, 8(13), 9{3}{a}, 9(9)(c), 15{5}, 16{3} or 19(6) shall be liable on conviction to imprisonment for a period not exceeding 2 years or to a fine or to both a fine and such imprisonment.

(3) Any person who contravenes section 12 or 14(2) shall be liable on conviction to imprisonment for a period not exceeding 1 year or to a fine or to both a fine and such imprisonment.

(4) It is an offence to:

(a) supply false or misleading information to an authorised person in respect of any matter pertaining to this by-law, or;

(b) refuse to co-operate with the request of an air quality officer or authorised person made in terms of this by-law and any person convicted of such offence shall be liable to imprisonment not exceeding 30 days or a fine or both a fine and imprisonment.

(5) Where no specific penalty is provided, any person committing an offence in terms of this by-law is liable on conviction to imprisonment for a period not exceeding 1 year or to a fine or to both imprisonment and a fine.

(6) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.

(7) Any person who commits continuing offences shall be guilty of a separate offence each day during which that person fails to comply with a notice, direction or instruction referred to in this by-law.

CHAPTER 6

GENERAL MATTERS/ MISCELLANEOUS

30. Compliance Monitoring

For the purposes of compliance monitoring, the designated municipal environmental management inspectors must exercise the powers as set out in sections 31G to 31L of the NEMA, as amended.

31. Enforcement

(1) The authorised person shall take all lawful, necessary and reasonable measures to enforce the set provisions of this by-law.

(2) The municipality may also develop enforcement procedures, which should take into consideration any national or provincial enforcement procedures.

32. Appeals

(1) Any person may appeal against a decision taken by an authorised person under this by-law by giving written notice of the appeal, in which the reasons for the appeal are stated, to the municipal manager, within thirty days of the date on which that person receives notification of the decision.

(a) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons thereof to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

(8) Pending confirmation, variation or revocation of the decision in terms of subsection (4), any person appealing a decision in terms of subsection (1), unless the municipality provides otherwise:

(a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and

(b) may not exercise any rights that may have accrued as a result of the decision that is the subject of the appeal application, provided that no other person may exercise any right that may have accrued either.

(9) Within ten days of receipt of the notice of appeal, the municipal manager must:

(a) submit the notice of appeal to the Council;

(b) take all reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the appeal application, including any persons registered as interested and affected parties, are notified in writing of the notice of appeal and advised of their right to:

- (i) obtain a copy of the notice of appeal; and
 - (ii) submit written objections to the notice of appeal to the municipal manager within fourteen days of date of notification.
- (10) After the expiry of the fourteen day period referred to in subsection 3(b)(ii), the Council must consider the appeal and any objections raised to it, and confirm, vary or revoke the decision.
- (11) When the appeal is against a decision taken by –
- (a) an authorised person other than the municipal manager, then the municipal manager is the appeal authority; or
 - (b) the municipal manager, then the Council is the appeal authority.
- (12) An appeal authority must commence with the appeal within thirty days of receiving notification and must decide the appeal within ninety days.

33. Exemptions

- (1) Any person may, in writing, apply for exemption from the application of a provision of this by-law to the Council.
- (2) No exemption from the provisions of Chapter 4 of this by-law shall be granted in terms of subsection (1).
- (3) An application in terms of subsection (1) must be accompanied by reasons.
- (4) It must contain such other particulars concerning the application if the council so require
- (5) The Council may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant interested and affected persons and the public.

(6) The steps contemplated in subsection (4) must include the publication of a notice in at least two newspapers, one circulating provincially and one circulating within the Municipality's jurisdiction:

- (a) giving reasons for the application; and
- (b) containing such other particulars concerning the application as the Council may require.

34. The Council may:

- (a) from time to time review any exemption granted in terms of this section; and
- (b) on good grounds withdraw any exemption.

35. Severability

If a section, subsection, sentence, clause or phrase of this by-law is declared invalid by a competent court, the invalid portion shall be severed and shall not affect the validity of the remaining portions of this by-law.

36. Jurisdiction

Notwithstanding anything to the contrary contained in any law relating to the magistrates court, the magistrates court a magistrate shall have jurisdiction , on the application of the Council to make an order for the enforcement of any of the provisions of these by-laws or of any approval, refusal or condition granted in terms hereof.

37. Repeal of By-Laws

The by-laws set out in Schedule 1 of this by-law are repealed to the extent set out in that Schedule.

38. Short Title

This by-law shall be called the air pollution control by-law, 2017

39. Commencement Date

This by-law shall come into operation on the date of publication in the Provincial Gazette.

40. Annexure:

Namakwa District Municipality Air Quality By-law Offences and Penalties

Section Contravened	Description of Offense	Proposes Fine (1)	Approved Fine (2)
	Controlled Appliances and Activities		
13. (1) (a) r.w. 29	No person may, in a public or private road, drive; use or cause a compression ignition powered vehicle that emits dark smoke.	R2000	R2000
13(4)(a).r.w.29	Failing to pay recovery of cost by the municipality	R2000	R2000
14(a) r.w.29	Every person who is wholly or partially responsible causes dust emissions that may lead to harm to public health and well-being.	R2000	R2000
14(b) r.w.29	Failing to take measures to prevent and/or mitigate air pollution and/or failing to comply with a directive on listed activities.	R2000	R2000
14.1 (a) r.w.29	A person who engages in or carries out any construction activity or operation on any land or premises is guilty of an offence without a notified writing.	R2000	R2000
14.2 (b) (i-iv) r.w. 29	Failure of owners and/or operators of unpaved roads to implement reasonable control measures to prevent excessive emissions of dust into the atmosphere.	R2000	R2000

	LOCAL EMISSIONS STANDARDS, NORMS AND STANDARDS		
19(1) r.w.29	Any person who is emitting substances or mixtures of substances exceeding the emission standards published in terms of this By - law	R2500	R2500
18 (1) r.w. 29	A person who carries out or permit the burning of any tyres, or rubber products, cables or any other products on any land or premises.	R2500	R2500
	CONTROLLED EMITTERS		
14(1) r.w.29	The installation, altering, extension or replacement of any fuel -burning equipment of a Controlled Emitter without the prior written authorization of Council	R2500	Sect14 not in operation A.G not determined
14(6) r.w.15(3) r.w.29	Failing to remove fuel -burning equipment from the premises at the expense of the owner and operator and within the period stated in a notice	R2500	Sect14 not in operation A.G not determined
	MONITORING AND SAMPLING		
16(1) r.w.29	Refusal or failing to install emission measuring equipment and or to	R2500	R2500

	do emissions monitoring if and when required by an authorized person		
16(1)(a) r.w.29	Failing to record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining results	R500	R500
16(1)(b) r.w.29	Failing to produce the record of the monitoring and sampling results for inspection	R500	R500
16(1)© r.w.29	Failing to provide a written report, in a form and by a date specified by the authorised person, of part or all of the information in the record of the monitoring and sampling results	R500	R500
	DUST EMISSIONS		
17(1) r.w. 29	Any person conducting listed activities or controlled emitters that refuse to take control measures to prevent or minimize dust emissions into the atmosphere	R2500	R2500
17(2)(i-vii) r.w.29	Refusing or failing to implement the control measures to minimize or control dust emissions from Controlled Emitters and Listed Activities	R2500	R2500

	EMISSIONS CAUSED BY OPEN BURNING		
16(1)(a)	Any person who carries out or permits open burning of any material on any land or premises without prior written authorisation.	R2000	R2000
17 r. w. 29	A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises	R2000	R2000
18 (a) r.w. 29	Any person who carries out or permit the burning of any tyres, or rubber products, cables or any other products on any land or premises	R2000	R2000
19(1) r. w. 29	Any person who carries out or permit the spraying of pesticides without prior written authorization.	R2000	R2000
	OFFENSIVE ODOURS		
20.1 r. w 29	Failure of any occupier or owner of premises from which a nuisance emanates, or where a nuisance exists, is guilty of an offence	R2500	R2500
	ABATEMENT NOTICE		
20.2 (1)(a-c) r.w.29	Failing to adhere to the conditions set in the abatement notice	R2500	R2500
20.2 (4) r.w.29	Failing to comply with any other conditions contained in the notice	R2500	R2500
	LICENSING OF LISTED ACTIVITIES		
23(2)	Undertaking a Listed Activity, as published in	R2500	R2500

r.w.29	terms of section 21 of the Air Quality Act, without being in possession of an Atmospheric Emission License		
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